recognize that there are additional steps that we can take to facilitate access to capital. In the following sections, we discuss funding resources available through RUS and outline the ways in which we are working together with RUS to promote rural deployment. We also examine and modify our policies governing security interests in FCC licenses. As discussed below, we believe that relaxing our policies to permit licensees to grant RUS a security interest in FCC licenses, conditioned upon the prior approval of any assignment or transfer of control of the license, will permit licensees to take full advantage of the collateral value of their spectrum rights and reduce the risks of lending. We also examine our cellular cross-interest rule and transition to case-by-case review of cellular cross-interests in RSAs. We believe that these actions will facilitate investment and financing opportunities for licensees seeking to provide service in rural areas.

1. Rural Utilities Service (RUS) Loan Programs

43. RUS, through its Telecommunications Program, assists the private sector in developing, planning, and financing the construction of telecommunications infrastructure in rural America. Programs administered by RUS include: (1) infrastructure loans; (2) broadband loans and grants;[123] (3) distance learning and telemedicine loans and grants; (4) weather radio grants; (5) local TV loan guarantees; and (6) digital translator grants. For fiscal year 2004, no less than $2.211 billion in loans is available for the Rural Broadband Access Loan and Loan Guarantee Program, with $2.051 billion for direct cost-of-money loans, $80 million for direct 4 percent loans, and $80 million for loan guarantees.[124]

44. In order to encourage greater access and deployment of wireless services throughout rural America, the Commission's WTB has partnered with RUS to sponsor the "Federal Rural Wireless Outreach Initiative" (FCC/RUS Outreach Partnership).[125] The FCC/RUS Outreach Partnership was announced on July 2, 2003.[126] The four key goals of the FCC/RUS Outreach Partnership are to: (1) exchange information about products and services each agency offers to promote the expansion of wireless telecommunications services in rural America; (2) harmonize rules, regulations and processes whenever possible to maximize the benefits for rural America; (3) educate partners and other agencies about Commission, WTB and USDA/RUS offerings; and (4) expand the FCC/WTB and USDA/RUS partnership, to the extent that it is mutually beneficial, to other agencies and partners.[127]

45. The *Rural NPRM* sought comment on what, if any, further regulatory or policy changes should be made to complement RUS's Telecommunications Program, and any other method of securing

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[123] RUS implemented the Rural Broadband Access Loan and Loan Guarantee Program in fiscal year 2003. The broadband loan program provides loans and loan guarantees for the construction, improvement and acquisition of facilities and equipment for broadband service in eligible rural communities. 7 C.F.R. § 1738.10(a).

[124] *See* Rural Broadband Access Loans and Loan Guarantees Program, *Notice of Funds Availability*, 69 Fed. Reg. 16231 (Mar. 29, 2004). The funding levels for the 4 percent direct loans and the loan guarantees is derived from the budget authority carried over from prior years' mandatory funding.

[125] *See* "FCC and USDA Hold Kick-Off Meeting of the "Federal Rural Wireless Outreach Initiative," *News Release*, 2003 WL 21511807 (rel. July 2, 2003) (*Federal Rural Wireless Outreach Initiative News Release*).

[126] For an overview of the FCC/RUS Outreach Partnership Kick-Off Event, *see* <http://wireless.fcc.gov/outreach/ruralinitiative/event20030702.html>.

[127] *See Federal Rural Wireless Outreach Initiative News Release.*

financing for rural build out and operations.[128] The Commission requested comment on methods to help facilitate access to capital in rural areas in order to increase the ability of wireless telecommunications providers to offer service in rural areas.[129] The Commission noted that an important part of accomplishing this goal is through the promotion of federal government financing programs. The *Rural NPRM* requested comment on how the Commission can assist in making the RUS loan programs more effective.[130] The Commission sought comment on whether there are any Commission regulations or policies that should be reexamined or modified to facilitate participation in the RUS programs by wireless licensees and service providers.[131]

46. *Discussion.* We believe that the FCC/RUS Outreach Partnership continues to be a useful means of encouraging greater access and deployment of wireless services throughout rural America. Indeed, commenters indicated general support for the FCC/RUS Outreach Partnership as well as the expansion of the initiative to other federal agencies as well as non-governmental entities. While there was support for our rural wireless initiative in general, however, certain commenters expressed concern over RUS loan program rules and policies that they argue are overly burdensome.[132] Commenters request the Commission's assistance in making RUS loan programs more effective, and urged the Commission to adopt policies that will help facilitate access to capital in order to spur rural deployment. For example, Nextel Partners suggested that the Commission as well as other agencies develop a range of grant and loan programs to assist carriers in the provision of mobile wireless services to rural areas.[133] With respect to RUS loan program rules, we note that certain RUS policies are statutorily mandated. To the extent that we can adopt rules or policies that will facilitate the use of RUS loan programs, however, we will do so. For example, as we set out below, we are modifying our policy with respect to the grant of security interests in FCC licenses, which we believe will enable more prospective borrowers to qualify for RUS loans. We will continue to work with RUS and other federal agencies to research and identify rural community wireless telecommunications needs and strive to create program efficiencies that might assist with exploring options to meet those needs. Further, we will continue to work with RUS to develop rural outreach programs, materials and workshops, which provide technical and economic information on telecommunication technologies and funding options. We are pleased to note that commenters have expressed interest in taking part in the FCC/RUS Outreach Partnership.[134] We look

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[128] *Rural NPRM*, 18 FCC Rcd at 20839 ¶ 77.

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] *See, e.g.*, CTIA Comments at 14-15 (RUS application rules and practices are unnecessarily bureaucratic and, in some cases, clearly favor incumbent rural wireline providers at the expense of new wireless entrants), Nextel Partners Comments at 9-10 (there is a focus on wireline rather than wireless issues, legislative changes should be implemented to allow for a range of grants and loans to wireless carriers for the provision of a wide array of narrowband as well as broadband mobile wireless services), OPASTCO/RTG Comments at 12, Western Wireless Reply Comments at 6 (incumbency protections in the RUS program should be eliminated).

[133] Nextel Partners Comments at 10.

[134] For example, NRTC indicated interest in assisting the Commission and RUS through the FCC/RUS Outreach Partnership, and ITA offered to facilitate information sharing among the private land mobile community from the

(continued....)

forward to future opportunities to work with these parties as part of the FCC/RUS Outreach Partnership and encourage other entities to participate in our ongoing efforts to promote rural wireless deployment.

2. Conditional Security Interests to RUS

47. *Background.* As we noted in the *Rural NPRM*, the Commission's policies with respect to commercial transactions involving FCC licenses have evolved over time.[135] As the Commission has gained experience in regulating wireless licensees and as the wireless marketplace has developed, the Commission's policies with respect to control and capital formation issues have matured. Particularly in the last decade, the Commission has modified its policies to address evolving licensee and consumer needs, while concurrently taking appropriate measures to safeguard its regulatory authority vis-à-vis private licensees and to ensure compliance with its statutory responsibilities. Central to the evolution of these market-oriented policies is the Commission's understanding that, in order for wireless licensees to construct facilities and deploy innovative services to all Americans, wireless licensees must have sufficient access to capital.

48. Although the Commission has increasingly embraced market-based transactions, recognizing the marketplace enables licensees to put spectrum to its highest and best uses, this has not always been the case. As a historical matter, the Commission initially was restrictive in its policies towards market-oriented transactions. For example, the Commission prohibited the sale of bare licenses, basing its position on its interpretation of Sections 301 and 304 of the Communications Act.[136] The Commission stated that "Section 301 and 304 provide, *inter alia*, that licenses issued by the Commission convey no property interest," and that "[t]o allow a permit to be transferred in a situation in which the station seller obtains a profit, prior to the time that programs tests have commenced, would appear to violate this prohibition."[137] The Commission subsequently changed its interpretation of these statutory provisions, however, and has approved the for-profit sale of unbuilt licenses and construction permits for terrestrial wireless, broadcasting and satellite services. In the context of the sale of an authorization of an unbuilt cellular telephone facility, the Commission held that "the plain language of Sections 301 and 304 of the Act does not address the sale of authorizations for stations, whether built or unbuilt, for-profit or not for-profit," but "[r]ather . . . congressional concerns that the Federal Government retain ultimate control over radio frequencies, as against any rights, especially property rights, that might be asserted by licensees who are permitted to use the frequencies."[138] The Commission went on to conclude that the

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RUS program or from the FCC/RUS Outreach Partnership. *See* ITA Reply Comments at 10; NRTC Comments at 7.

[135] *Rural NPRM*, 18 FCC Rcd at 20840 ¶ 79.

[136] *See* Revision and Update of Part 22 of the Public Mobile Services Rules, 95 FCC 2d 769, 800-01 n. 31 (1983), on reconsideration, 101 FCC 2d 799 (1985), on further reconsideration, 2 FCC Rcd 1798 (1987); Amendment of Section 73.3597 of the Commission's Rules, *Report and Order*, 52 Rad. Reg. 2d (P&F) 1081, 1089 (1982), on reconsideration, 9 FCC 2d 971(1985).

[137] Amendment of Section 73.3597 of the Commission's Rules, *Notice of Proposed Rule Making*, 47 Fed. Reg. 985, 987 (1982).

[138] Application of Bill Welch, *Memorandum Opinion and Order*, 3 FCC Rcd 6502, 6503 ¶ 10 (1988) (*Bill Welch*). See also 1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules, and Processes,

(continued....)

for-profit sale of "whatever rights a permittee has in its license" to a private party, subject to prior Commission approval, would be permissible under these statutory provisions.[139] In 1991, the Commission received a Petition for Declaratory Ruling regarding the grant of security interests in the broadcasting context,[140] and in 1992, the Commission initiated a proceeding in the broadcast context, seeking comment on whether we could improve access to capital by allowing licensees to grant security interests to creditors.[141] In 1994, the Commission found that a "security interest in the proceeds of the sale of a license does not violate Commission policy."[142]

49. Over time, the Commission's policies for all spectrum-based services have evolved to expressly permit licensees to grant security interests in the stock of the licensee, in the physical assets used in connection with its licensed spectrum, and in the proceeds from operations associated with the licensed spectrum.[143] Notably, the Commission itself has taken an exclusive security interest in licenses subject to the auction installment payment program and a senior security interest in the proceeds of a sale of an auctioned license. In such circumstances, and subject to the requirements and protections of the security agreements that bind the participants in the installment payment program, the Commission has allowed licensees to provide their lenders a subordinated security interest in the proceeds of a license sale.[144] Furthermore, the Commission continues to develop and evaluate its policies regarding security interests and control of spectrum, in order to ensure that these policies afford licensees sufficient flexibility consistent with the Communications Act to develop and deploy innovative technology and keep pace with ever-changing consumer needs. In its *Secondary Markets Policy Statement*, the Commission considered ways in which licensees may be able to maximize their efficient use of spectrum

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Report and Order, MM Docket No. 98-43, 13 FCC Rcd 23056, 23070 ¶ 30 (1998) ("We affirm the holding in Bill Welch that there is no per se statutory proscription against the for-profit sales of unbuilt stations."); Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10842-43 ¶¶ 217-19 (2003).

[139] *Bill Welch*, 3 FCC Rcd at 6503 ¶ 11.

[140] *See* Petition for Declaratory Ruling filed by Hogan & Hartson (Feb. 21, 1991), available at <http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=1035940001> and <http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=1035940002> (Hogan & Hartson Petition).

[141] Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, *Notice of Proposed Rule Making and Notice of Inquiry*, 7 FCC Rcd 2654 ¶¶ 18-23 (1992) (*Broadcast Capital Formation Notice*).

[142] Application of Walter O Cheskey, Trustee-in-Bankruptcy for N.C.P.T. Cellular, Inc. (Assignor) and Triad Cellular L.P. (Assignee), *Memorandum Opinion and Order*, 9 FCC Rcd 986 (Mobile Serv. Div., Comm. Car. Bur. 1994), application for review denied, 13 FCC Rcd 10656, 10660 (1998), application for review denied, *Amarillo CellTelCo v. FCC*, 1998 WL 796204 (D.C. Cir. 1998) (*Cheskey*).

[143] *See* Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 99 FCC 2d 1249, 1254 (1985).

[144] *See* 47 C.F.R. § 1.2110(g)(3) (requiring execution of promissory note and security agreement as a condition of participation in the installment payment program).

by leveraging "the value of their retained spectrum usage rights to increase access to capital," and indicated its intent to examine Commission policies prohibiting security and reversionary interests in licenses.[145] The Commission noted that it had not yet taken a position on whether its policy towards prohibiting a licensee to give a security interest in the license itself "is statutorily mandated or solely dictated by regulatory policy."[146] In the *Secondary Markets Report and Order*, the Commission found that licensees could enter into certain types of leasing transactions that are not deemed transfers of *de facto* control under Section 310(d) of the Act without prior Commission approval, provided licensees continued to exercise effective working control over the spectrum they lease. The Commission indicated that it was updating its policy for interpreting *de facto* control in the context of spectrum leasing, in order "to reflect more recent evolutionary developments in the Commission's spectrum policies, technological advances, and marketplace trends."[147]

50. In the *Rural NPRM*, the Commission continued its examination of its security interest policies as a means of facilitating access to capital, consistent with its authority under the Communications Act. Specifically, the Commission sought comment on whether permitting licensees to grant security interests in their licenses to RUS would result in lower costs of and greater access to capital. The Commission noted that it would review and require prior Commission approval of an assignment to RUS, in accordance with the Commission's transfer and assignment policies, *before* RUS could assume control of a license. The Commission also sought comment on whether modifying our policy to permit RUS to take a security interest in FCC licenses is a natural outgrowth of Commission and judicial developments, which recognize the value and ability of a lender obtaining a security interest in the licensee's stock, proceeds and other assets without infringing upon the Commission's statutory obligations. The Commission asked whether a licensee could grant RUS a security interest in an FCC license without compromising the Commission's obligation to maintain control of spectrum in the public interest and completely fulfill its applicable mandates under the Communications Act of 1934, as amended.[148] The Commission sought comment on what the consequences of such a policy shift might be, including what, if any, difference from the perspective of RUS, a third-party lender, or the licensee, there would be on a relaxation of the current security interest policies in the circumstances described above. Finally, the Commission sought comment on a concern that had been raised in the broadcasting context, regarding the independence of broadcast stations and about the ability of creditors to have substantial influence over a borrower station.[149] The Commission asked whether such dangers exist in the connection with RUS's attainment of security interests in non-broadcasting wireless licenses, especially as it relates to preserving and protecting facilities-based competition and innovation by and among wireless service providers.

51. *Discussion*. After careful review of the record, as well as the judicial and regulatory

[145] Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, *Policy Statement*, 14 FCC Rcd 24178, 24187-88 (2000) (*Secondary Markets Policy Statement*).

[146] *Id.* at ¶ 23 n. 35.

[147] *Secondary Markets Report and Order*, 18 FCC Rcd at 20610 ¶ 10.

[148] *See* 47 U.S.C. §§ 301, 304. Section 301 of the Act provides that the government can authorize the use but not the ownership of the spectrum ("channels of radio transmission"). Section 304 requires that any license applicant waive any claim to the use of the spectrum as against the regulatory power of the United States.

[149] *See Broadcast Capital Formation Notice*, 7 FCC Rcd at 2658-59 ¶ 23 (1992).

developments of the past decade, we believe that it is appropriate to adjust our policy with respect to the grant of security interests in FCC licenses. Of the comments we received regarding this issue, all but one was in favor of allowing RUS to take a security interest in FCC licenses.[150] As RUS states, "[a]llowing RUS to obtain a security interest in an FCC license will greatly improve loan security and will facilitate the agency's roles in fulfilling the President's goal for the universal deployment of broadband service . . . ."[151] We agree. We therefore modify our policy and permit commercial and private wireless, terrestrial-based licensees to grant security interests in their FCC licenses to RUS, conditioned upon the Commission's prior approval of any assignment or transfer of *de jure* or *de facto* control. A licensee therefore may grant RUS a security interest in its FCC license, provided that the Commission approves the transaction, pursuant to its authority under Section 310(d) of the Communications Act, *before* the secured party can exercise its right to foreclose on the license. We limit this policy change to wireless, terrestrial-based licensees that are within the scope of this proceeding.[152] Further, any security interest granted to RUS must be expressly conditioned, in writing as part of all applicable financing documents, on the Commission's prior approval of any assignment of the license or any transfer of *de jure* or *de facto* control of the license to the secured party or other person or entity. We also note that, in the case of a licensee operating under the installment payment program, the Commission will retain its exclusive, senior secured position with respect to the license. The Commission also will retain its senior secured position with respect to the proceeds of the sale of such license. Accordingly, we clarify that RUS may not obtain a security interest in an FCC license in instances where the FCC itself is a secured creditor, but may obtain a subordinated interest in the proceeds subject to the requirements of the licensee's installment payment obligations (*e.g.*, those set forth in the security agreement between the licensee and the FCC).

52. We believe that relaxing our security interest policy to permit licensees to grant RUS a conditional security interest in their FCC licenses will greatly enhance the value of a licensee's available collateral by facilitating RUS's ability (as a secured party) to keep the licensees' assets together as a package. As RUS points out, "an operation is much more valuable if there is the ability to sell the operation as a whole instead of liquidating the individual assets in the event of default."[153] Similarly, Blooston notes that "[a]dding the license to the collateral pie will likely reduce the risks of lending, as RUS would be able to keep all of the required elements of a wireless project together as a package."[154] We agree with these assessments and are unpersuaded by RCA's implication that a licensee can maximize the value of its collateral without the license.[155] While we acknowledge that it may be possible

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[150] RCA filed comments opposing this proposal. *See* RCA Comments at 12-13.

[151] RUS *Ex Parte* at 1 (*ex parte* filing received May 5, 2004).

[152] *See supra* note 3.

[153] RUS *Ex Parte* at 1. RUS also observes that by keeping the spectrum together with the assets, service to the public may remain uninterrupted during any foreclosure or bankruptcy proceedings, as well as during any restructuring arrangements. *Id.* at 2.

[154] Blooston Comments at 23.

[155] *See, e.g.*, RCA Comments at 13 (contending that "[t]here is no inherent value in the bare license, only in the proceeds of a license sale and lenders already hold the tools necessary to protect their interests and obtain the proceeds"). We also perceive little merit in RCA's argument that "RUS should have no interest in the license *per se* or in becoming the licensee." *Id.* This argument misses the point: the goal of relaxing the security interest

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for a licensee – primarily through careful corporate structuring – to cobble together a set of interests that it can offer to a lender as security that approximates a security package containing the license, we believe that rural licensees will be much better served if they can approach RUS for financing without having to incur the potentially substantial transactional and other administrative costs that might be necessary to create such a package.

53. The record supports our conclusion that a relaxation of our security interest policy with respect to RUS may measurably increase the financing opportunities of licensees serving the rural population of the United States. As RUS indicates, the possibility of obtaining a security interest in a license may enable RUS to approve some loans that might otherwise be rejected because the applicant cannot produce sufficient collateral.[156] RUS states that "[i]n order to reasonably secure [a] lien, RUS would need either a lien on the licenses or some other asset," and that "[i]n many cases, the loan process is complicated and delayed because of the need to negotiate some other form of collateral when the borrower cannot pledge the licenses as security."[157] RUS states that "without the right to secure an interest in the license granted by the FCC, RUS may have to reject applications for financial assistance that were on the cusp, given that the going-concern value of the borrower's company would have to be lowered in its financial analysis."[158] Blooston also notes that "[h]aving the option to pledge a security interest would lower transactions costs between the lender and borrower, as the borrower will garner greater access to capital, and the RUS could possibly have greater access to secondary loan markets."[159] We disagree with RCA's contention that permitting RUS to obtain a security interest in an FCC license would not enhance RUS financing opportunities while making the RUS lending process more onerous. Based on the record, including the comments of RUS, we believe that relaxing our security interest policy will do the opposite: by permitting RUS to take a conditional security interest in FCC licenses, we can help make the RUS loan process less burdensome and enhance RUS loan opportunities.

54. Our decision to relax the current restrictions on security interests reflects the Commission's increased reliance on market-oriented policies to facilitate and encourage competition. At the same time, limiting this initiative to RUS, as was proposed in the *Rural NPRM*, avoids any suggestion that the Commission's recognition of a third party property interest in an FCC license itself conveys any type of ownership interest prohibited by the Communications Act. Although this relaxation of our security interest policy marks the first time that the Commission has recognized such an interest, the third party involved (RUS) is a federal governmental agency. Thus, we do not believe that anyone – licensees, their lenders, or the courts – would mistakenly construe our action as a retreat from the principle of the Communications Act that the spectrum itself is a public resource and cannot be "owned" or deemed private property. This principle is stated most explicitly in Sections 301 and 304 of the Act. Section 301 provides for the control of the United States over "all the channels of radio transmission" and for "the

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policy in the manner described herein is not to encourage RUS to become a licensee, but to facilitate RUS's ability to lend a sufficient amount of funds to rural licensees, in order to better serve the rural population of our country.

[156] RUS *Ex Parte* at 1; *see also* RUS *Ex Parte* Appendix at 2.

[157] RUS *Ex Parte* at 1.

[158] RUS *Ex Parte* Appendix at 2.

[159] Blooston Comments at 23.

use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority."[160] Section 301 also states that "no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license."[161] Section 304 provides that the Commission cannot grant any station license until "the applicant thereof shall have waived any claim to the use of . . . the electromagnetic spectrum as against the regulatory power of the United States."[162] Furthermore, pursuant to Section 310(d), the Commission must review and approve license assignments and transfers of control, assess and confirm the basic qualifications of assignees and transferees, and, more generally, determine whether the transaction in question will serve the public interest, convenience and necessity.[163]

55. In view of the limitations of such provisions as Sections 301, 304 and 310(d), it is clear that the Communications Act prohibits a licensee from "owning" the spectrum it uses, and that the Commission cannot grant, with a license, any such ownership interests. At the same time, however, we recognize that a licensee holds certain "spectrum usage rights," as defined within the terms, conditions, and period of the FCC license at the time of issuance.[164] The Commission has used the security interest prohibition as one bright line to mark off the point at which a licensee's spectrum usage rights end and the government's control of spectrum begins. By permitting RUS – but only RUS – to take a conditional security interest in an FCC license, we maintain the heart of this bright line: *i.e.*, a prohibition on anyone other than the federal government holding a property interest in something as closely associated with spectrum as an FCC license. RUS (like the FCC) is an agency of the United States with a particular mandate from Congress. We believe that permitting it to obtain a security interest in an FCC license will further its mandate and is fully consistent with the view of spectrum as a public resource. Moreover, by conditioning any assignment or transfer of *de facto* or *de jure* control of the license on prior Commission approval pursuant to Section 310(d), we ensure that the Commission retains ultimate control over the spectrum. Thus, the FCC's approval must be obtained before RUS can foreclose on a security interest it may hold in an FCC license or before RUS or any other entity may otherwise obtain control of the license or licensee. As Blooston notes, this prior approval will "satisf[y] [our] Congressional mandate, while at the same time encouraging capital formation in rural areas."[165]

56. We recognize that one could argue that a grant of a security interest in an FCC license does not convey any ownership of spectrum, but rather ownership of the licensee's private spectrum usage rights associated with the FCC license.[166] However, after carefully considering whether this argument would support extending the relaxation of our security interest policy to non-United States

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[160] 47 U.S.C. § 301.

[161] *Id.*

[162] 47 U.S.C. § 304.

[163] *See* 47 U.S.C. § 310(d).

[164] *See Secondary Markets Policy Statement,* 14 FCC Rcd at 24187 ¶ 22.

[165] Blooston Comments at 23.

[166] *Cf. Bill Welch,* 3 FCC Rcd at 6503 ¶ 11 (finding that Sections 301 and 304 of the Act "do not bar the for-profit sale to a private party, subject to prior Commission approval, of whatever private rights a permittee has in its license").

lenders, we have decided to limit our action to RUS, as stated in the *Rural NPRM.* Thus, we will maintain a bright line prohibition against private (non-government) lenders taking a security interest in an FCC license.

57. As an additional matter, we believe that relaxing our policy to permit the grant of conditional security interests in FCC licenses to RUS is unlikely to result in RUS exercising inappropriate influence over the licensee. We are in agreement with Blooston, which notes that "it is very unlikely that RUS would have an inappropriate influence over the licensee."[167] As noted earlier, licensees may grant security interests in the proceeds of the sale of their licenses, as well as in their assets and stock. We have received no evidence, and we have no reason to suspect, that RUS has used any of these types of transactions, already permitted under our rules and policies, to exercise inappropriate influence over any FCC licensee. In light of these circumstances, we do not believe that permitting a licensee to grant RUS a conditional security interest in the license itself will increase the likelihood of such inappropriate influence.

58. We note that some commenters express concern that modifying our policy to permit RUS to obtain a security interest could impede its ability to obtain financing from other lenders. For example, RCA claims that this policy shift "could inadvertently cause private loans to become so completely subordinated to RUS loans that private capital resources are diminished as a result."[168] Although Nextel supports security interests generally, Nextel states that "RUS should not require such a security interest as a minimum threshold requirement to its loan programs, but only as one of several alternative options to secure the loan obligation."[169] Nextel notes that "[t]his would allow the carrier flexibility in structuring its financing without deterring other, private lenders whose perceived ability to secure their loans might be adversely affected by RUS's priority as a creditor in the license itself."[170] As Blooston states, however, "[p]roviding licensees with the ability to offer their license as collateral would create an opportunity, not a requirement," and "the wireless provider, as in all loan decisions, will initially determine whether the business risks outweigh the benefits of using its license for collateral."[171] Licensees have the option of obtaining financing through RUS; in the event they find RUS's terms unsuitable, they may elect to work with private lenders. Licensees are not required to provide RUS with a conditional security interest, although this modification of our policy permits them to do so, at their option.

3. Cellular Cross-Interest Rule

59. *Background.* To facilitate additional access to capital by cellular carriers in rural areas, the Commission sought comment regarding whether the prohibition against cellular cross-interests in all RSAs remains in the public interest. As set forth in Section 22.942 of the Commission's rules, the prohibition substantially limits the ability of parties to have interests in cellular carriers on different

[167] *See id.* at 24.

[168] RCA Comments at 13.

[169] Nextel Partners Comments at 11-12.

[170] *Id.*

[171] Blooston Comments at 24.

channel blocks in the same rural geographic area.[172] To the extent licensees on different channel blocks have any degree of overlap between their respective cellular geographic service areas (CGSAs) in an RSA,[173] Section 22.942 prohibits any entity from having a direct or indirect ownership interest of more than five percent in one such licensee when it has an attributable interest in the other licensee.[174] An attributable interest is defined generally to include an ownership interest of 20 percent or more or any controlling interest.[175] An entity may have a non-controlling and otherwise non-attributable direct or indirect ownership interest of less than 20 percent in licensees for different channel blocks in overlapping CGSAs within an RSA.[176]

60. The Commission consolidated into the instant proceeding two petitions that seek reconsideration of the decision in the December 2001 *Spectrum Cap Sunset Order*,[177] which, on the basis of the state of competition in CMRS markets, sunset the CMRS spectrum cap rule in all markets[178] and eliminated the cellular cross-interest rule in MSAs because cellular carriers in urban areas no longer enjoyed first-mover, competitive advantages.[179] In March 2002,[180] the Commission sought comment on petitions filed by Dobson Communications Corporation, Western Wireless Corporation, and Rural Cellular Corporation (Dobson/Western/RCC) and Cingular Wireless LLC (Cingular) seeking reconsideration of the portion of the *Spectrum Cap Sunset Order* that retained the cellular cross-interest rule in RSAs.[181] While the Commission left the cross-interest rule in place in RSAs, it indicated in the

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[172] 47 C.F.R. § 22.942. The original cellular cross-interest rule was adopted in 1991. *See* Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, *First Report and Order and Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 6185, 6228-29 ¶¶ 103-06 (1991) (*Cellular First Report and Order*).

[173] Application of the cellular cross-interest rule requires comparison of the CGSAs of cellular licensees operating on A Block frequencies in an RSA with those of cellular licensees operating on B Block frequencies in the same RSA. Because cellular licensees are authorized on frequencies in either one or the other of these channel blocks, any geographic area within an RSA will fall within the CGSAs of no more than two cellular licensees (one on each channel block).

[174] 47 C.F.R. § 22.942(a).

[175] *Id.* § 22.942(d)(1), (2). Other rules for determining attributable interests are set forth elsewhere in Section 22.942(d). *See id.* §§ 22.942(d)(3)-(9).

[176] *Id.* § 22.942(b).

[177] *See* 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668 (2001) (*Spectrum Cap Sunset Order*).

[178] *Id.* at 22669 ¶ 1.

[179] *Id.* at 22707 ¶ 84.

[180] *See* Petitions for Reconsideration of Action in Rulemaking Proceeding, *Public Notice*, Report No. 2540 (Mar. 15, 2002).

[181] Cingular Petition for Reconsideration, WT Docket No. 01-14 (Feb. 13, 2002) (Cingular Petition); Dobson/Western/RCC Petition for Reconsideration, WT Docket No. 01-14 (Feb. 13, 2002) (Dobson/Western/RCC Petition). In addition to incorporating submissions from these parties into the instant proceeding, pursuant to the

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Spectrum Cap Sunset Order that it would consider waiver requests and reassess the need for the rule at a future date.[182]

61. In the *Rural NPRM*, the Commission made clear that it sought to balance its efforts to remove unnecessary regulatory barriers to financing and investment of cellular service in rural areas with the need to safeguard competition in RSAs. As an initial matter, it sought comment on a tentative conclusion to retain the current cellular cross-interest rule in RSAs with three or fewer CMRS competitors.[183] Assuming the Commission were to decide to retain a number-based rule, the *NPRM* also sought comment on how to define a "competitor" under such a proposal, whether a "competitor" might be any CMRS provider with significant geographic overlap with the cellular licensee,[184] and whether a transition period was necessary to sunset the rule for those RSAs with four or more competitors.[185]

62. In the alternative, the Commission sought comment on a range of other options for modifying or eliminating the current rule in a way that promotes investment in rural areas while retaining adequate competitive safeguards. For example, the Commission sought comment on whether to eliminate the prohibition for all RSAs where the ownership interest being obtained is not a controlling interest (*i.e.*, where the interest is a non-controlling interest and where the transaction otherwise would not require prior FCC approval).[186] It sought comment on the extent to which the waiver option has deterred or prevented acquisition of capital in rural markets.[187] Although a specific waiver process has existed to address this barrier to investment in rural areas,[188] the Commission noted that the transactions costs and regulatory uncertainty surrounding any waiver procedure may deter some beneficial investment in these areas.[189] Finally, the Commission sought comment on the option of extending case-by-case

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recommendation of staff, *see* Federal Communications Commission 2002 Biennial Regulatory Review, WT Docket No. 02-310, GC Docket No. 02-390, *Staff Report of the Wireless Telecommunications Bureau*, 18 FCC Rcd 4243 app. IV at 4316 (2003), the Commission incorporated the comments of parties seeking elimination of the cellular cross-interest rule in the context of its 2002 biennial regulatory review. *See generally* 2002 Biennial Regulatory Review, *Report*, 18 FCC Rcd 4726 (2003).

[182] *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22708-09 ¶¶ 88, 90.

[183] *See Rural NPRM*, 18 FCC Rcd at 20847 ¶ 95.

[184] We used "significant overlap" in the context of applying the CMRS spectrum cap rule and asked whether a similar concept could be used in the context of the cellular cross-interest rule. *See* 47 C.F.R. § 20.6(c); *Rural NPRM*, 18 FCC Rcd 20848 ¶ 97.

[185] *Rural NPRM*, 18 FCC Rcd at 20848 ¶ 97.

[186] In this context, it observed that cellular licensees in MSAs are free to procure financing that involves ownership interests that fall below the threshold that triggers Commission review, while cellular licensees in all RSAs are not so permitted. *Id.* at ¶ 98.

[187] *Id.* at 20848-49 ¶ 98.

[188] *See Spectrum Cap Sunset Order*, 16 FCC Rcd at 22709 ¶ 90.

[189] The Bureau did grant a request for waiver of the cellular cross-interest rule to allow CenturyTel Wireless to acquire a 14 percent non-controlling limited partnership interest in Lafayette MSA LP. *See* CenturyTel Wireless,

(continued....)

review, as established in the *Spectrum Cap Sunset Order,* to promote investment and reduce the possibility of impeding transactions that are actually in the public interest.[190] The Commission recognized the important role that the cellular cross-interest rule has provided in the past against the possibility of significant additional consolidation of cellular providers in rural areas, but it inquired whether the public interest may be better served by the benefits of pure case-by-case review.[191]

63. *Discussion.* Based on our review of certain arguments raised on reconsideration and in the comments regarding the advantages of case-by-case review, as well as developments since the release of the *Spectrum Cap Sunset Order* in 2001, we find that reliance on a uniform case-by-case review process for aggregations of spectrum and cellular cross interests in RSAs is currently the better approach as compared to prophylactic limits. We believe that continued application of the cellular cross-interest rule in RSAs may impede market forces that could drive financing and development of new services in rural and underserved areas. Accordingly, we find that it is in public interest to apply a more flexible approach in reviewing cellular competition in rural areas and, as a result, we will extend our Section 310(d) case-by-case review to all cellular markets.

64. We therefore eliminate the cellular cross-interest rule in RSAs and will utilize our case-by-case approach to review transactions where a level of cellular cross interests arises to a substantial transfer or assignment under Section 310(d) of the Act.[192] In addition, if a party with a controlling or otherwise attributable interest in one cellular licensee[193] within an RSA obtains a non-controlling interest of more than 10 percent in the other cellular licensee in an overlapping CGSA, we will require the licensee to notify the Commission within 30 days of the date of consummation of the transaction by filing updated ownership information (using an FCC Form 602) reflecting the specific level of investment. This notification requirement will sunset at the earlier of: (1) five years after the release of this item, or (2) at the cellular licensee's specific renewal deadline.[194] By employing this approach to maintain scrutiny over those cross interests that pose a particular risk to competition in the near term, we conclude that we have struck the proper balance between promoting investment and protecting consumers against potential competitive harms in rural areas.

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Inc and Century Tel, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 1260 (WTB 2003). The WTB found that the cellular cross-interests in the RSA overlap area did not involve a substantial likelihood of significant competitive harm because the local market was generally competitive with six providers offering service at similar prices. *Id.* at 1266 ¶ 19.

[190] *See Rural NPRM*, 18 FCC Rcd at 20849 ¶ 99.

[191] *Id.*

[192] 47 U.S.C. § 310(d).

[193] An attributable interest will be defined generally to include an ownership interest of 20 percent or more or any controlling interest.

[194] Although Dobson and other commenters state that a transition period before using pure case-by-case review is unnecessary, *see* Dobson Comments at 12-13, *see also* RCA Comments at 14 (indicating that a sunset period is unnecessary), we adopt a sunset period for the notification requirement, in order to provide an additional period of time for competition to develop.

65. Although the Commission last determined that the level of CMRS economic competition was not meaningful enough to warrant complete elimination of the cellular cross-interest rule pursuant to Section 11 of the Act,[195] it did not fully consider in its *Spectrum Cap Sunset Order* whether a move to case-by-case review for cross interests in RSAs would be in the public interest under the broader scope of its 2000 biennial review of spectrum aggregations limits.[196] To perform meaningful and timely review of spectrum aggregation transactions without the CMRS spectrum cap rule, the Commission explained that it needed time to develop effective guidelines for this process, as well as to ensure that sufficient resources were devoted to the task.[197] In contrast, because the concerns underlying the original purpose of the cross-interest rule had been achieved in MSAs, the Commission was able to immediately eliminate the rule in that context without having to consider to any great extent the rule's necessity as compared to other, less burdensome tools.[198] When the Commission subsequently determined that market conditions in rural areas had not changed sufficiently such that it should eliminate the cellular cross-interest rule in RSAs pursuant to Section 11 of the Act, it concluded its reexamination of the rule and did not evaluate whether it would nevertheless be in the public interest to extend the advantages of flexible case-by-case review to aggregation and cross interests of cellular spectrum in rural areas.[199]

66. Notwithstanding Section 11 of the Communications Act and the Commission's past findings regarding the level of economic competition in rural markets,[200] we decide on reconsideration of our *Spectrum Cap Sunset Order* and based on the comments filed in response to the *Rural NPRM* that it is in the public interest to eliminate the cellular cross-interest rule. Instead, parties will be permitted to file under our case-by-case review process for substantial cross interests in all cellular spectrum and report to the Commission a certain level of cellular cross interests in rural areas that do not arise to an assignment or transfer of control. Such a change in approach, supported by adequate resources and procedures and facilitated by collection of sufficient industry information along with appropriate enforcement mechanisms, is currently the better approach for evaluating whether proposed cross interests reflect opportunities for increased financing and new services or indicate potential risks of anticompetitive market conditions. The Commission indicated that its 2000 biennial review would consider whether other factors beyond the impact of competition made the cross interest rule appropriate

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[195] *See Spectrum Cap Sunset Order*, 16 FCC Rcd at 22708-09 ¶¶ 88-89.

[196] *See id.*

[197] *See id.* at 22696-97 ¶ 57.

[198] *See id.* at 22680-81 ¶ 29.

[199] Because the Commission had not had an opportunity to develop effective procedures or ensure that sufficient resources were available, it did not extend its review beyond Section 11 of the Act to consider whether other factors beyond the impact of competition had made it appropriate to repeal the cellular cross-interest rule in RSAs. *See id.* at 22708 ¶ 88. We disagree with Cingular's claim that applying the cellular cross-interest rule in RSAs is not "'well tailored to the harm that it seeks to prevent.'" Cingular Reply to Opposition to Petition for Reconsideration, WT Docket 01-14, at 7 (Apr. 18, 2002) (quoting *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22709 ¶ 90). Without resources, procedures, industry information collection, and appropriate enforcement mechanisms, applying the cross-interest rule (with provisions for waiver) in RSAs was the least restrictive and most efficient means at that time to regulate cellular competition in rural areas.

[200] *See supra* note 1. Although economic conditions seem to be changing, we need not make any determinations here. *See infra* ¶ 72.

for modification,[201] and in this context,[202] we find they do.[203]

67. Although we recognize the safeguard that the cellular cross-interest rule has provided against the possibility of significant additional consolidation of control over cellular spectrum in rural areas and the attendant serious anticompetitive effects,[204] we find that the public interest is better served by the benefits of case-by-case review with its greater degree of flexibility to reach the appropriate decision in each case, reduced likelihood of prohibiting beneficial transactions or levels of investment both in urban and rural areas, and ability to account for the particular attributes of a transaction or market. The greater regulatory flexibility offered by this change in tools for review outweighs any "guarantees" to the competitive nature of cellular competition in rural areas ensured by the current cross-interest rule,[205] as that rule may inadvertently discourage transactions and cross interests that could be found to be in the public interest.

68. We believe that no cross interest or transaction should be presumptively prohibited in RSAs and that we should consider such proposals under an approach that is consistent with the same case-by-case analysis that is employed in all other CMRS contexts.[206] The majority of commenters to the

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[201] *See Spectrum Cap Sunset Order*, 16 FCC Rcd at 22708-09 ¶ 88-90.

[202] We also note the broad context of the Commission's inquiry in the *Rural NPRM* that purposely went beyond Section 11 of the Act to consider such factors.

[203] Sprint PCS argues the decision to retain the cellular cross-interest rule in RSAs was justified because it was shown that rural areas are in fact different urban markets. *See* Sprint PCS Opposition to Petition for Reconsideration, WT Docket No. 01-14 (Apr. 5, 2002) (Sprint PCS Opposition). If the Commission was limited to awaiting the development of meaningful economic competition under Section 11 of the Act before it could consider whether other tools for review are more appropriate, it may result that application of the cellular cross-interest rule in RSAs could be justified indefinitely. The Commission acknowledged in the *Spectrum Cap Sunset Order* that the underlying economics appear to make it unlikely that competition in RSAs will evolve in the near term to rival that in MSAs. *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22691 ¶ 43; *see also id.* at 22680 ¶ 28 ("In rural markets . . . demographic and geographic conditions generally appear to render additional large-scale entry economically difficult to support.").

[204] Although economic theory dictates that there is not a static threshold by which a reduction in competitors results in anticompetitive harm, a consolidation in a local cellular market from duopoly to monopoly status provides consumers with less choice and potentially less benefits from competition. The likelihood of the Commission approving a cellular consolidation between two providers in such conditions remains small. The concerns over rural roaming services that Sprint PCS presents simply presuppose that the Commission would affirmatively grant the merger of two cellular carriers and permit a monopoly of cellular roaming services in rural areas. *See* Sprint PCS Opposition at 7-8. Moreover, the Commission indicated in the *Spectrum Cap Sunset Order* that it disagrees with commenters who believe that prophylactic rules should be retained to further opportunities for roaming arrangements. *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22694 ¶ 51 (explaining that case-by-case review allows the flexibility to consider any such concerns raised with respect to specific applications).

[205] *See Spectrum Cap Sunset Order*, 16 FCC Rcd at 22679 ¶ 26. ("In adopting the cellular cross-interest rule, the Commission acted '[i]n order to *guarantee* the competitive nature of the cellular industry and to foster the development of competing systems.'") (emphasis added) (quoting *Cellular First Report and Order*, 6 FCC Rcd at 6628 ¶ 104.).

[206] *See, e.g.*, Cingular Petition at 5-6, CTIA Comments at 2, Verizon Wireless Reply Comments at 2.

Rural NPRM supported elimination of the cellular cross-interest rule,[207] either in its entirety or in RSAs with more than three competitors.[208] We agree with Dobson and other commenters that indicated that removal of the cellular cross-interest rule would promote efficient spectrum transactions, and would allow the market to function properly.[209]

69. In the *Spectrum Cap Sunset Order*, the Commission gave much consideration to the availability of less burdensome case-by-case review before it decided that the CMRS spectrum cap rule was no longer necessary in the public interest.[210] Given the level of competitive market forces and the benefits of flexible case-by-case review, it determined that it had the means to sunset the CMRS spectrum cap rule in all markets, RSAs as well as MSAs. The Commission decided to retain the cellular cross-interest rule in RSAs based on reasoning that the likelihood of approving a cellular consolidation between two providers in a given market was small and that it would be more efficient and less costly for the Commission to maintain a prophylactic rule and to entertain waiver requests for the small subset of transactions in RSAs where competition was more robust.[211] In review, given advancements in our case-by-case processing procedures and resources since December 2001, we believe that we can repeal the rule to better encourage transactions and levels of financing that are in the public interest while maintaining much of the protection afforded by the cellular cross-interest rule. We agree with commenters that the current waiver approach may interfere with investment in rural areas by discouraging certain financing in the RSA portions of a regional market but not in the MSA portions.[212] Our approach in essence relaxes the permitted threshold to 49.9 percent, consistent in part with the position of U.S. Cellular Corp. (USCC).[213] However, for the reasons explained here, we disagree with USCC's argument that there is no conceivable situation where the public interest could be served by considering such transactions in RSAs.[214] Our decision here is to change tools for review to a more

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[207] *See* AT&T Wireless Comments at 10, CTIA comments at 12-13, Cingular Comments at 5-6, Dobson Comments at 10-12, OPASTCO/RTG Comments at 14, Arctic Slope Reply Comments at 1-2, AT&T Wireless Reply Comments at 10, Western Wireless Reply Comments at 7, OPASTCO/RTG Reply Comments at 9.

[208] *See, e.g.,* Dobson Comments at 12. After further consideration, we believe that a number-based rule defined by notions of "competitor" would be too imprecise and inflexible in a dynamic marketplace where, *e.g.*, spectrum can be leased and infrastructure can be shared.

[209] *See* AT&T Wireless Comments at 10, CTIA Comments at 12-13, Cingular Comments at 5-6, Dobson Comments at 10-12, OPASTCO/RTG Comments at 14, Arctic Slope Reply Comments at 1-2, AT&T Wireless Reply Comments at 10, Western Wireless Reply Comments at 7, OPASTCO/RTG Reply Comments at 9.

[210] *See, e.g., Spectrum Cap Sunset Order*, 16 FCC Rcd at 22695-96 ¶ 54 ("Although we decide today that the spectrum cap rule is no longer necessary in the public interest, we must still achieve the objectives that the spectrum cap was intended to promote. We believe that these objectives can now be better achieved in the context of secondary market transactions through case-by-case review, properly performed.").

[211] *Cf. id.* at 22696 ¶ 56.

[212] *See, e.g.,* CTIA Comments at 13, Arctic Slope Reply Comments at 2, OPASTCO/RTG Comments at 14. One commenter stated that the Commission should waive application of the cross-interest rule for entities owned and controlled by Alaska Native Corporations or Indian tribes. *See* Council Tree Comments at 3, 7-10.

[213] USCC Comments at 4.

[214] *Id.* at 5.

precise standard, and we make no determination that such proposed transactions are any more likely to be found to be in the public interest.

70. Case-specific review, along with information resources and enforcement mechanisms,[215] is a more targeted process to examine the actual competitive positions involved in a particular transaction or level of cross interests and ensure that acquisitions of and cross interests in spectrum do not have anticompetitive effects that render them contrary to the public interest.[216] As the Commission indicated in the *Spectrum Cap Sunset Order* in the context of the CMRS spectrum cap rule, we can rely on case-by-case review of CMRS spectrum aggregation (including cross interests of cellular spectrum in rural areas) to fulfill our statutory mandates to promote competition, ensure diversity of license holdings, and manage the spectrum resource in the public interest.[217] We have been increasing the resources available to review spectrum aggregation transactions and developing internal procedures for review of concentration of CMRS spectrum in general, and cross interests of cellular spectrum in rural areas in particular. While it at first places greater resource demands on parties and the Commission, over time, these actions will provide parties, including small businesses, with legal precedent and a reasonable degree of certainty and transparency regarding cross interests of cellular spectrum in rural areas and should minimize the administrative costs of case-by-case review for all applicants and licensees, as well as Commission staff. In addition, we believe there may be an inequity that distorts the market in any area in which more than just the two cellular licensees hold spectrum and find that the better approach to safeguarding competition is to take account of the particular circumstances of each market through case-specific review.[218]

71. To review aggregations or cross interests of cellular spectrum in rural areas, we eliminate Section 22.942 of the Commission's rules such that applicants and parties will only be required to obtain prior Commission approval for transactions subject to Section 310(d) of the Act. Although we are imposing a reporting requirement to collect ownership information on certain levels of interests that do not trigger Section 310(d) review, we have adopted reporting thresholds that reflect a comparatively higher 10 percent level of permitted cross interest by a party with a controlling interest in a given cellular licensee. Under Section 22.942, a party with a controlling interest in one of the cellular licensees may only have a 5 percent direct or indirect ownership interest in the other licensee in that CGSA.[219] Under the new reporting standard, we will allow a party with a controlling or otherwise attributable interest in one of the cellular licensees to have a non-controlling or otherwise non-attributable direct or indirect

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[215] During our case-by-case review of any cellular consolidation that occurs within rural areas, we will collect information as necessary to exercise our authority to not only grant or deny applications and/or modify instruments of authorization, but to enforce sanctions in cases of misconduct where we find evidence of collusion or other anticompetitive practices.

[216] 47 U.S.C. § 310(d). Specifically, Section 310(d) of the Communications Act requires us not to approve any "transfer, assignment, or disposal of [a] permit or license, [or attendant rights]" unless we find that "the public interest, convenience, and necessity might be served" thereby. *Id.*

[217] *See Spectrum Cap Sunset Order*, 16 FCC Rcd at 22696 ¶ 55 (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)).

[218] In the RSA markets that have been covered by the cellular cross-interest rule, for example, the rule prohibits the two cellular licensees from merging without filing a waiver, but does not prevent one cellular licensee from merging with a PCS licensee.

[219] 47 C.F.R. § 22.942.

ownership of up to and including 10 percent in the other cellular licensee in overlapping CGSAs without notification.[220] We have not been able to determine conclusively that such cross interests pose a significant threat to competition, and this new 10 percent threshold will afford petitioners and commenters some relief from restrictions on financing in the RSA portions of a regional market.[221] Moreover, it harmonizes the reporting threshold with our FCC Form 602 ownership reporting requirements imposed currently on all licensees.

72. We do not make any determination here on the extent to which cellular carriers may continue to hold a dominant market share in rural areas or whether a consolidation of cellular licenses in RSAs would likely result in a significant reduction in competition.[222] We note, however, that a concentration of interests between the two cellular licensees in rural areas would more likely result in a significant reduction in competition than an aggregation of additional CMRS spectrum by such licensees. In addition, we note that different risks to competition are present depending on whether a proposed cross interest would be held by a telecommunications carrier or by a third-party bank or other source of financing. By reviewing substantial aggregations of cellular cross-interests on a case-by-case basis, as discussed above, we retain the flexibility to evaluate individual transactions on their own merits and account for these different factors in determining whether approval of the transaction will serve the public interest under section 310(d).

D. Increasing Licensee Flexibility

1. Performance Requirements

73. *Background.* Over the past decade, the Commission has shifted away from site-based licensing for wireless licensees and has adopted more flexible, geographic-area based allocations that provide licensees with greater freedom to provide different types of services. In making this shift, the Commission also has adopted performance benchmarks that increase licensees' flexibility to offer a variety of services, including service that may not require ubiquitous geographic coverage. As a general

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[220] We will require a party with a controlling interest in one cellular licensee in a CGSA to apply for prior Commission approval of a controlling interest, no matter how small, in the other licensee in that market. A party that has non-controlling or otherwise non-attributable direct or indirect ownership interest of up to 20 percent in both licensees in the same CGSA will not be required to report ownership information to the Commission.

[221] We agree with Dobson/Western/RCC that investment in rural areas should not be presumptively prohibited by unnecessarily restricting financing in the RSA portions of a regional market and that these benefits outweigh the costs. *See* Dobson/Western/RCC Petition at 7-10.

[222] *See Spectrum Cap Sunset Order*, 16 FCC Rcd at 22708-09 ¶ 89. The Commission determined that, based on the information available, the only markets with meaningful economic competition under Section 11 of the Act were those in MSAs where cellular carriers no longer possess market power. Because the objectives of the cross-interest rule had been achieved in MSAs, the Commission repealed the cellular cross-interest rule in that context. Without a more comprehensive showing that competition in rural areas was meaningful, however, the Commission was unable to conclude that repeal of the cellular cross-interest rule in RSAs was appropriate, because the cellular providers in those areas seemed to continue to enjoy first-mover advantages and to dominate the marketplace. In the *Spectrum Cap Sunset Order*, the Commission described fewer choices in terms of providers, pricing plans, and service offerings that consumers in the majority of RSAs have over consumers in MSAs. Based on the record in that proceeding, the Commission found that rural markets have significantly less competition than urban markets due to population density and economics. *See id.* at 22684-85 ¶ 34.

matter, geographic-area licensees are not required to construct their entire geographic area in order to retain their authorizations. Instead, depending upon the specific service, the Commission's rules may require coverage of a certain percentage of the licensed area's population or a certain percentage of the licensed area's geographic area. For many, but not all services,[223] the Commission has adopted a flexible "substantial service" construction standard that allows licensees that are providing a beneficial use of the spectrum to retain their authorizations without satisfying a prescribed population- or geographic-based construction requirement.[224] The substantial service standard was intended to provide flexibility for services with a variety of uses for the spectrum (*i.e.*, fixed or mobile, voice or data) or with a high level of incumbency that would prevent a new geographic-based licensee from meeting the coverage requirements. While the definition of "substantial service" is generally consistent among wireless services,[225] the factors that the Commission will consider when determining if a licensee has met the standard vary among services.[226] Once a licensee satisfies its construction requirement during its initial license term, the Commission's rules currently do not require that the licensee satisfy additional construction requirements during subsequent renewal terms other than the standards necessary to achieve a renewal expectancy.[227]

74. In the *Rural NPRM*, the Commission proposed modifications to our construction requirements to promote licensee flexibility and the build-out of rural areas. First, the Commission proposed to adopt a "substantial service" construction benchmark for all wireless geographic area licensees that are subject to build-out requirements but that did not have the option of meeting those requirements by providing substantial service.[228] Specifically, the Commission proposed to amend its

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[223] At present, the following geographic area licensees are subject to construction requirements and do not have a substantial service construction option: 30 MHz broadband PCS licensees, 800 MHz SMR (blocks A, B, and C only), 220 MHz licensees providing services other than fixed services and who do not have at least one incumbent licensee in their markets, LMS licensees, and MDS/ITFS licensees.

[224] For some services, such as LMDS and 39 GHz, the Commission has adopted only a "substantial service" construction requirement. *See* 47 C.F.R. §§ 101.1011(a) (LMDS), 101.17(a) (39 GHz).

[225] Substantial service generally has been defined as service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal. *See, e.g.*, 47 C.F.R. §§ 22.503(k)(3), 27.14, 90.685(b), 95.831, 101.527(a), 101.1011(a).

[226] For example, in some wireless services, the Commission indicated that licensees providing niche, specialized, or technologically sophisticated services may be considered to be providing "substantial service." *See, e.g.*, Amendment to Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Report and Order*, 10 FCC Rcd 6884, 6898-99 ¶ 41 (1995). In other services, the Commission has indicated that licensees providing an offering that does not cover large geographic areas or population (*e.g.*, point-to-point fixed service), but nonetheless provides a benefit to consumers, also may meet the standard. *See, e.g.*, Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-522, *Third Report and Order* and *Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943, 11017-18 ¶ 158 (1998).

[227] As the Commission noted in the *Rural NPRM*, licensees must file applications for renewal of their authorizations and must comply with any applicable renewal requirements. *See Rural NPRM*, 18 FCC Rcd at 20825 ¶ 43 n. 93. See also 47 C.F.R. § 1.949.

[228] *Id.* at 20820-23 ¶¶ 35-39.

regulations to extend the substantial service construction benchmark to the following licensees: 30 MHz broadband PCS licensees; 800 MHz SMR licensees (blocks A, B, and C); certain 220 MHz licensees;[229] LMS licensees; Multipoint Distribution Service and Instructional Television Fixed Service (MDS/ITFS) licensees; and 700 MHz public safety licensees.[230] The Commission observed that construction benchmarks that mandated population- or geographic-specific coverage might hinder licensees from serving niche or less populated areas, and might unintentionally discourage construction in rural areas.[231] Second, the Commission asked whether we should adopt geographic-based construction requirements for private and commercial terrestrial wireless services that are licensed on a geographic area basis and that do not have a geographic-based requirement.[232] The Commission noted that a geographic benchmark would provide licensees who did not intend to focus construction efforts on population centers with an alternative.[233] Third, the Commission asked whether we should adopt substantial service "safe harbors" that are tailored to providing coverage in rural areas, and proposed safe harbors for mobile as well as fixed services.[234] Finally, the Commission also asked whether requiring compliance with additional construction requirements in license terms following initial renewal of the license might be likely to increase build-out in rural areas.[235]

75. *Discussion.* In large part, we adopt the proposal, as set forth in the *Rural NPRM*, to extend the substantial service construction benchmark to all wireless services that are licensed on a geographic area basis. Specifically, we amend our regulations to provide a substantial service construction benchmark for the following licensees: 30 MHz broadband PCS licensees; 800 MHz SMR licensees (blocks A, B, and C); certain 220 MHz licensees;[236] LMS licensees; and 700 MHz public safety licensees. These licensees now have the option of satisfying their construction requirements by providing substantial service or by complying with other service-specific construction benchmarks

[229] We do not include EA and regional 220 MHz licensees offering fixed services or who have at least one incumbent, co-channel Phase I licensee in their markets. These licensees already may satisfy their construction requirement through the provision of substantial service. *See* 47 C.F.R. § 90.767(b). Similarly, Phase II nationwide 220 MHz licensees offering fixed services already have a substantial service option. *See* 47 C.F.R. § 90.769(b).

[230] In the *Rural NPRM*, the Commission noted that current construction requirements require 700 MHz public safety licensees to provide "substantial service," but that this requirement is premised upon the provision of substantial service to a certain percentage of their licensed population at five and 10 years. *See Rural NPRM*, 18 FCC Rcd at 20820-21 ¶ 35 n. 79 (citing 47 C.F.R. § 90.529(b).). Because this "substantial service" requirement is not a flexible benchmark, the Commission included 700 MHz public safety spectrum within the scope of this proceeding. *See id.*

[231] *Rural NPRM*, 18 FCC Rcd at 20821 ¶ 36.

[232] *Id.* at 20823-24 ¶ 40.

[233] *Id.*

[234] *Id.* at 20824-25 ¶¶ 41-42.

[235] *Id.* at 20825-26 ¶¶ 44-46.

[236] We exclude EA and regional 220 MHz licensees offering fixed services or who have at least one incumbent, co-channel Phase I licensee in their markets. We also exclude Phase II nationwide 220 MHz licensees offering fixed services. *See infra* n.230.

already available to them under the Commission's rules. We decline to take any action with respect to the MDS/ITFS and the 71-76 GHz, 81-86 GHz and 92-95 GHz (70/80/90 GHz) bands, because construction rules for these bands recently have been or will be addressed in service-specific proceedings.[237]

76. Based on the record before us, we believe that modifying our rules to permit these additional licensees to satisfy their construction requirements by providing substantial service will increase their flexibility to develop rural-focused business plans and deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic coverage requirements.[238] As the Commission noted in the *Rural NPRM*, particularly in cases where a licensee has a population-based construction requirement, licensees have both an economic and practical incentive to

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[237] Although the Commission sought comment regarding adopting a substantial service benchmark for MDS/ITFS licensees in the *Rural NPRM*, we have released a service-specific *Further Notice of Proposed Rule Making* seeking to develop more of a record on this issue. We will make a determination with respect to MDS/ITFS in that proceeding. *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150 - 2162 and 2500 - 2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, WT Docket No. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-135 (rel. July 29, 2004). With respect to 70/80/90 GHz, the Commission elected to issue non-exclusive nationwide licenses conditioned upon site and path-specific coordination. *See* Allocations and Service Rules for the 71-76 GHz, 81-86 GHz, and 92-95 GHz Bands, *Report and Order*, 18 FCC Rcd 23318, 23337-43 ¶¶ 43-60 (2003) (*70/80/90 GHz Report and Order*). Consistent with its decision not to issue exclusive licenses for geographic areas, the Commission did not adopt any area-wide substantial service requirements, deciding instead to require licensees to construct individual links within 12 months after registering them. *Id.* at 23349 ¶ 80.

[238] *See also* Blooston Comments at 16, CTIA Comments at 5, Cingular Comments at 4 n. 11, NRTC Comments at 3-5, Southern LINC Comments at 7, RCA Comments at 8 (but stating that a substantial service requirement should be accompanied by the condition that any areas that remain unserved by a date certain will be returned to the Commission for re-licensing), WCA Comments at 7, Blooston Reply Comments at 7, Southern LINC Reply Comments at 4-6, Sprint Reply Comments at 21-24, WCA Reply Comments at 2, 5, Western Wireless Reply Comments at 9. We note that CTIA, among others, requests clarification that lessees, on behalf of their lessors, may satisfy construction requirements for the licensed spectrum at issue. *See* CTIA Comments at 4-5. The Commission squarely addressed this issue in the *Secondary Markets Report and Order*, stating that licensees using spectrum manager leasing arrangements or long-term *de facto* transfer leasing arrangements may rely upon the activities of their spectrum lessees for purposes of complying with the build-out requirements, but that licensees using short-term spectrum leasing arrangements may not be counted for the purposes of the build-out rules. *See Secondary Markets Report and Order*, 18 FCC Rcd at 20655, 20667, 20676 ¶¶ 114-115, 146, 177; *see also* 47 C.F.R. §§ 1.9020(d)(5) (governing spectrum manager leasing arrangements), 1.9030(d)(5) (governing long-term *de facto* transfer leasing arrangements), 1.9035(d)(3) (governing short-term *de facto* transfer leasing arrangements). Accordingly, provided the leasing arrangement at issue satisfies the conditions and requirements set forth in the *Secondary Markets Report and Order*, a lessee may satisfy the construction obligations on behalf of the licensee. We note, however, that the construction requirements remain a condition of the license and, to the extent a licensee relies upon the activities of its lessee and the lessee fails to engage in those activities, we will enforce the applicable performance or build-out requirements against the licensee, consistent with our existing rules. *See Secondary Markets Report and Order*, 18 FCC Rcd at 20655, 20667 ¶¶ 115, 146.

achieve compliance with the Commission's build-out obligation by providing service to urban areas.[239] Further, current population-specific benchmarks may have the unintended consequence of encouraging several licensees within a particular market to provide coverage to the same populous areas. In order to satisfy its construction obligations and safeguard its license, even a late entrant who is the fourth or fifth competitor in a particular area initially may choose to duplicate existing carriers' footprints while other, more sparsely populated areas may be without such competition or even service at all. With the additional flexibility afforded by a substantial service option, however, licensees will be free to develop construction plans that tailor the deployment of services to needs that are otherwise unmet, such as the provision of service to rural or niche markets. As Southern LINC explains "[w]hile a substantial service alternative, by itself, does not guarantee that all licensees will serve rural areas, the additional flexibility of this alternative undoubtedly improves the likelihood of rural deployment" and "provide[s] licensees with the opportunity to target unserved rural areas."[240] Moreover, providing these licensees with the option of satisfying their construction requirements by providing substantial service in their licensed areas will increase parity among geographic area licensees.[241] This action promotes more equal regulatory footing with respect to construction obligations.

77. We disagree with those commenters who urge the adoption of a substantial service standard only for those licensees with "small geographic territories."[242] Our intent in providing licensees with a substantial service option is not to mandate, but to encourage and facilitate construction in less populated areas by providing licensees with sufficient flexibility to develop unique business plans that do not require ubiquitous coverage or coverage of densely populated areas. In keeping with our market-oriented policies, we do not propose to require licensees to deploy services where their market studies or other analyses indicate that service would be economically unsustainable. NTCA states that a large licensee "may provide service to a 'substantial' portion of the population, while completely ignoring and providing no service to the vast majority of the license territory, *i.e.*, the rural territory."[243] We acknowledge that a licensee might satisfy its construction obligation by providing service to areas where population is densely concentrated; this would be particularly true if we were to agree with NTCA and refuse to allow licensees with large licensed areas to provide substantial service. By limiting the substantial service option to licensees of smaller geographic areas only, we believe that NTCA's suggestion effectively encourages the very thing NTCA seeks to deter: focused coverage of populated areas instead of more rural areas. As we stated earlier, the adoption of the substantial service standard provides licensees with the flexibility to provide coverage to other, less populated areas and still satisfy its coverage requirement without necessarily focusing on more urban population centers.

78. We also decline at this time to follow the recommendations of OPASTCO and RTG, that

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[239] *See Rural NPRM*, 18 FCC Rcd at 20821 ¶ 36.

[240] Southern LINC Reply Comments at 6.

[241] As Southern LINC pointed out, "EA licensees in Channel Blocks A, B, and C, of the 800 MHz SMR band do not currently have a substantial service alternative, even though the FCC adopted this alternative for licensees in Channel Blocks D through V as well as several comparable CMRS services." *See* Southern LINC Comments at 8. *See also* CTIA Comments at 5, Sprint Reply Comments at 23 (noting that extending the substantial service construction alternative to all geographic area wireless licensees would promote regulatory parity).

[242] *See* Blooston Comments at 17, NTCA Comments at 10-11, Blooston Reply Comments at 8-9.

[243] NTCA Comments at 11.

we "abandon" our substantial service performance benchmark in favor of "stricter, more specific build-out obligations, and a 'keep what you use' approach similar to the 'unserved area' licensing regime established for cellular service.[244] OPASTCO and RTG argue that a "keep what you use" approach will provide licensees with an incentive to provide service to rural areas or otherwise provide access to others who are willing to do so.[245] As demonstrated by our trend towards licensing services on a geographic-area basis, we believe that licensees can provide a meaningful and socially beneficial service without providing ubiquitous service and that providing licensees with sufficient flexibility to respond to market fluctuations will promote the public interest. However, we recognize that, for example because they can be used sequentially, market-based mechanisms and re-licensing approaches (such as "keep what you use") are not necessarily mutually exclusive. Accordingly, our *Further Notice* will continue this discussion of the appropriate re-licensing, and construction obligations for current and future licensees who hold licenses beyond their first term.

79. As an additional matter, we adopt safe harbors for providing substantial service to rural areas. As we state earlier in Section III.A, we adopt a default definition of "rural area" as a county with a population density of 100 persons per square mile or less, based upon the most recent Census data. We apply this definition for purposes of these rural-focused substantial service safe harbors. In light of the fact that the geographic area licenses are comprised of counties, we believe it is sensible and administratively efficient to adopt safe harbors for geographic area licenses that also are based upon counties. With respect to mobile wireless services, a licensee will be deemed to have met the substantial service requirement if it provides coverage to at least 75 percent of the geographic area of at least 20 percent of the "rural areas" within its licensed area. With respect to fixed wireless services, the substantial service requirement is met if a licensee constructs at least one end of a permanent link in at least 20 percent of the number of "rural areas" within its licensed area. Licensees may satisfy these construction requirements through lease agreements, provided these arrangements satisfy the conditions set forth in the *Secondary Markets Report and Order*.[246] As we stated in the *Rural NPRM*, the use of a population density of 100 persons or fewer per square mile is derived from our finding in the *Eighth Competition Report*, which indicates that counties with population densities of 100 persons per square mile or less "have an average of 3.3 mobile competitors, while the more densely populated counties have an average of 5.6 competitors."[247] We believe that this population density-based definition provides a workable and reasonable point of differentiation between rural and non-rural areas, as we noted earlier in Section III.A.

80. We believe it is beneficial to adopt these safe harbors because they provide licensees with concrete examples of how they can provide substantial service through specific types of deployment in rural areas, thereby increasing certainty and alleviating concerns that the substantial service

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[244] *See* OPASTCO/RTG Joint Comments at 4.

[245] *See id.* at 5; *see also* NTCA Comments at 10 (arguing that licensees of large service areas should be subject to a "keep what you use" approach).

[246] *See Secondary Markets Report and Order*, 18 FCC Rcd at 20655, 20667, 20676 ¶¶ 114-115, 146, 177; *see also* 47 C.F.R. §§ 1.9020(d)(5) (governing spectrum manager leasing arrangements), 1.9030(d)(5) (governing long-term *de facto* transfer leasing arrangements), 1.9035(d)(3) (governing short-term *de facto* transfer leasing arrangements).

[247] *Eighth Competition Report*, 18 FCC Rcd at 14836 ¶ 114.

requirement is overly vague.[248] We emphasize, however, that these safe harbors do not constitute the only means by which a licensee may provide substantial service. A licensee is therefore free to meet the substantial service test by satisfying one of the safe harbors or providing some alternative coverage to its licensed area, depending upon the individual needs of their consumers or their own unique business plans. We also note that the *Rural NPRM* provided licensees with additional guidance by setting forth a list of factors that we will consider in the context of determining whether a licensee is providing substantial service to rural areas. We affirm that we will consider these factors in evaluating substantial service showings. Specifically, we will look at the following factors: (1) coverage of counties or geographic areas where population density is less than or equal to 100 persons per square mile; (2) significant geographic coverage; (3) coverage of unique or isolated communities or business parks; and (4) expanding the provision of E911 services into areas that have limited or no access to such services.[249] While this list is not intended to be exhaustive or exclusive, we believe it illustrates the sorts of material factors we will consider in any rural substantial service analysis. By adopting substantial service "safe harbors," as well as by providing examples of the sorts of factors we will consider in evaluating substantial service showings, we believe we satisfactorily balance the competing interests of maximizing licensee flexibility while providing some measure of certainty.

81. We decline at this time to introduce a "very rural area" safe harbor[250] or modify our safe harbors to include a population component. We note that several commenters asked that we include a population component to make the safe harbor more meaningful for licensees whose licensed areas include counties with large land areas.[251] These commenters argue that in such circumstances, it may be easier for a licensee to satisfy population requirements instead of the substantial service safe harbor.[252] As we stated above, the safe harbors are not intended to be the only means of providing substantial service. We will take into consideration if a licensee is serving a "very rural area" or a very large geographic area.

82. We also decline to adopt a geographic-based benchmark for all wireless geographic area services that are subject to construction requirements but that otherwise do not have a geographic-specific construction requirement.[253] Only one commenter, Southern LINC, addressed this issue. We note that although Southern LINC supports adoption of a such a geographic-area based requirement, stating that "the geographic-based requirement would give licensees serving only rural/underserved areas

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[248] OPASTCO and RTG state that the "substantial service" standard is "vague and nearly unenforceable" and that "[t]he vagueness of the current 'substantial service' standard will most likely inhibit the deployment of wireless service to rural areas." *See* OPASTCO/RTG Joint Comments at 5.

[249] *See Rural NPRM*, 18 FCC Rcd at 20822-23 ¶ 38.

[250] *See* Blooston Reply Comments at 8 (suggesting adoption of a "very rural area" safe harbor for licensed areas with a population density of less than 10 persons per square mile).

[251] *See* Dobson Comments at 16, Western Wireless Comments at 9-10.

[252] *See id.*

[253] We note that there was some support in the record for this proposal. Southern LINC Comments at 7. As noted above, we believe that licensees will have the freedom to explore these different business strategies in the context of a substantial service construction option.

another way to meet the construction obligation of the licensed area as a whole,"[254] we believe that licensees who wish to provide coverage to a particular geographic portion of their licensed area have the flexibility to do so pursuant to the "substantial service" standard. We conclude, based upon the record in this proceeding, that there is no demonstrated need to modify our regulations in this regard.

83. We also decline to adopt performance requirements for renewed licenses at this time. A large number of commenters oppose the imposition of such requirements. Many indicate that the Commission should not impose any new construction requirements beyond the initial license term.[255] These commenters argue, *inter alia*, that such requirements would disturb licensees' business plans, upset market valuations of licenses, and impose unnecessary and uneconomic construction requirements on licensees who otherwise have appropriate incentives to deploy services where it makes economic sense to do so. Southern LINC states that many licensees "expended vast sums of money at auction with the reasonable expectation that they would retain their licenses after satisfying the applicable performance requirements during the initial license term."[256] While we recognize the concerns of existing licensees regarding future construction requirements, we believe that re-licensing approaches such as "keep what you use" and market-based mechanisms are not necessarily mutually exclusive. While we do not make any such changes at this time, we initiate a *Further Notice* to continue our discussion of various re-licensing approaches and the merits, if any, of construction requirements for current and future licensees holding licensees beyond their first term.

84. We note that although we refrain from adopting renewal term performance requirements at this time, we will continue to examine the state of competition in rural areas and will revisit this decision in the event we observe that licensees cease deploying new services in rural areas and/or that secondary markets are not facilitating sufficient access to spectrum for would-be service rural service providers. We emphasize that, contrary to Sprint's assertions, the Commission retains the right to modify the terms and conditions of FCC licenses.[257] Among other claims, Sprint argues that modifying license renewal rules "cannot be justified under [the] statutory standard" of doing something in the public interest, convenience, and necessity,[258] that "[a] significant change to the renewability of a license purchased at auction would . . . constitute a taking under the Fifth Amendment,"[259] and that "[a] subsequent Commission decision that PCS carriers will lose some or all of their licenses during the renewal period if they do not satisfy new, additional build-out requirements or do not serve certain areas would constitute a major breach of the license contract."[260] The Commission's licensing system has never provided any vested right to specific license terms. Rather, it is well established that the

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[254] Southern LINC Comments at 7.

[255] *See, e.g.*, AT&T Comments at 6-7, CTIA Comments at 6, Cingular Comments at 4, Dobson Comments at 14, 17, Nextel Partners Comments at 18, Southern LINC Comments at 8-9, Blooston Reply at 9, Nextel Partners Reply at 4, Southern LINC Reply at 7, Sprint Reply at 10-14.

[256] Southern LINC Comments at 9.

[257] *See* Sprint Reply Comments at 15-21.

[258] *Id.* at 15.

[259] *Id.* at 20.

[260] *Id.* at 18.